legal title and the right to possession of the land in controversy. (Three judges dissenting.) *Coyne* v. *Davis,* (Neb. 1915) 154 N. W. 547.

The principal race presents an exceedingly interesting problem and seems to be one of first impression. It must be taken as elementary that an executor cannot profit by speculation in the property of the estate which he represents, because he stands in a fiduciary relation to those taking through the estate and cannot use this position of trust and confidence to make a profit for himself. *Caldwell* v. *Caldwell,* 45 Ohio St. 512, 15 N. E. 297. See on this subject *Tyler et al.* v. *Sanborn,* 128 Ill. 136, 4 L. R. A. 218; *Munson* v. *Syracuse G. & C. Ry. Co.,* 103 N. Y. 75. An exception has been engrafted to this rule: a trustee, or one standing in a fiduciary character such as an executor or an administrator, may, with all parties represented, have leave to purchase, provided there is no fraud or combination of any kind. *Anderson* v. *Butler,* 31 S. C. 183, 5 L. R. A. 166. The purpose of the general rule is not only to prevent the practice of fraud, but also to deprive the one standing in the fiduciary relation of any temptation to commit fraud. *Sypher* v. *McHenry,* 18 Ia. 232; *Mapps* v. *Sharpe,* 32 Ill. 13 (making the rule applicable to mortgagors): *Moore* v. *Moore,* 5 N. Y. 256 (making the rule applicable to agents); *Parmenter* v. *Walker,* 9 R. I. 225. Where this general rule has been violated it is equally well settled that the executor or other fiduciary officer, who has taken advantage of his position can be held to a strict accounting for all profits made by such violation, by those whose interests have been affected. *Davoue* v. *Fanning,* 2 Johns, Ch. 252; see also *Michaud v. Girod,* 45 U. S. (4 How.) 557, 11 L. Ed. 1076, holding to the above principle and severely criticizing those courts which allow a purchase by the executor under any circumstances, whether they be fraudulent or not. But if it be conceded in the principal case that there was an equitable conversion of the testator's realty to personalty from the date of his death under the principles announced in *Boland* v. *Tiernay* 118 Ia. 59, 91 N. W. 836; *Burbach v. Burbach,* 217 Ill. 547, 75 N. E. 519, then the present plaintiffs could not complain, because they have no interest whatever in any dealings between the executrix and the residuary legatee. The purpose of the will and the intention of the testator had been carried out as far as they were concerned. The only person who could complain here was the residuary legatee, and in this suit, since it has allowed judgment to go against it by default, it is forever barred to assert its claim. The result therefore is, that the court is helpless to do otherwise than decree this property to belong to the executrix although it was gained by the grossest kind of fraud. The ground of the dissent, for which no cases are cited as precedents, is simply that the principles of equitable conversion did not apply and should not be allowed to apply to effect such a result as above stated.

GARNISHMENT—DUTY TO GIVE NOTICE AND MAKE DEFENSES.—Plaintiff sued defendant for a debt of $406.20 and defendant seeks a credit of $295.50 paid on a judgment rendered against it, as garnishee, by a justice of the peace in Kansas. In the suit in garnishment, defendant, as garnishee, neither

interposed defenses of which he was cognizant in behalf of his creditor, nor gave his creditor (present plaintiff) notice of the garnishment proceedings. *Held,* the paid judgment in the garnishment proceeding is not a satisfaction, *pro rata,* as against present plaintiff. *St. Louis & S. F. R. Co.,* v. *Crews,* (Okl. 1915), 151 Pac. 879.

It is a general rule that judgments and decrees are conclusive only between parties and privies thereto. ROOD, JUDGMENTS, §81. *Ruff* v. *Ruff,* 85 Pa. St. 333. A garnishee is not required, in garnishment proceedings, to interpose a defense for the principal debtor, in fact it would not do him any good if he would, for the principal debtor, not being a party to the suit in garnishment, would not be bound by the judgment. *Ruff* v. *Ruff, supra.* The garnishee may admit away his own rights, but he has no power to admit away the rights of others. *Hebel* v. *Amazon Ins. Co.,* 33 Mich. 400. The amount for which the garnishee has been made liable is never conclusive as against the principal debtor as determining that it is the full amount due from him; otherwise a garnishee, by confessing part of the debt, could avoid payment of the residue. FREEMAN, JUDGMENTS, §167. But "it is recognized as the duty of the garnishee to give notice to his own creditor, if he would protect himself, so that the creditor may have the opportunity to defend himself against the claim of the party suing out the attachment." *Harris* v. *Balk,* 198 U. S. 215; *Pierce* v. *Chicago Ry.,* 36 Wis. 283; *Morgan* v. *Neville,* 74 Pa. 52; and mere notice without offer of opportunity to defend is not sufficient. *Crisp* v. *Ft. Wayne & E. Ry. Co.,* 98 Mich. 648; *Adams* v. *Filer,* 7 Wis. 265, 73 Am. Dec. 410. Good faith requires that he should bring to the attention of the court the claims of all persons to the property, but he is under no obligation to hunt up evidence as to the real owner, *Karp* v. *Citizens' National Bk.,* 76 Mich. 679; or to decide the questions at his peril, *Conshohocken Tube Co.* v. *Iron Car Equipment Co.,* 167 Pa. St. 592, 31 Atl. 949. The garnishee has the right, and it is his duty, in most of the states, to claim and defend the exemption for the principal debtor. *Crisp* v. *Ft. Wayne & E. Ry. Co., supra; Missouri Pac. Ry. Co.* v. *Whipsker,* 77 Tex. 14. 13 S. W. 639. In such a case the garnishee is not really interposing a defense of the principal debtor, but he is defending the portion allowed by law to the debtor and his family. It would seem that the principal case goes further than was justified when it said that the garnishee should interpose defenses, of which he was cognizant, in behalf of his creditor. *Moore* v. *The C. R. I. & P. R. Co.,* 43 Iowa, 385, 387. Speaking of the garnishee in that case the court said: "As to the merits of the case he is, and should be held to be, indifferent. 1 Iowa 411. To require him to interpose a defense would be to subject him to the expense of a trial and the risk of a judgment against him and costs."

INFANTS—ADVERSE INTEREST OF GUARDIAN AD LITEM.—A suit for partition had been brought by a tenant-in-common against the co-tenants, a widow and her infant children. The widow was appointed guardian ad litem for one of the infant defendants, and the suit proceeded to judgment.